IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3671 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JILUBEN ILYASBHAI SANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3671 of 2001

MR ANIL VARMA FOR MR MM TIRMIZI for Petitioner No. 1

MR KT DAVE AGP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/11/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Rajkot City, Rajkot, vide order dated April 25, 2001, Annexure A

to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act as four cases under the Prohibition Act are registered against her which are pending at trial/investigation stage and statements of two anonymous witnesses are recorded in unregistered cases and, therefore, according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order and public health and hence powers under Section 9 (2) of the Act were exercised by the detaining authority by not disclosing the identity of the witnesses and detained the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing the impugned order of detention and setting her at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Varma, learned advocate for the petitioner has restricted his arguments to the effect that copies of vital documents which are demanded by the detenu are not supplied to her. He contended that vital documents like statement of Head Constable who raided the premises and report of Chemical Analyzer are not supplied to the detenu and non-supply of such vital documents has caused serious prejudice to the petitioner of making an effective representation as envisaged under Section 22 (5) of the Constitution and infirmity in this regard violates the constitutional safeguard guaranteed under Article 22 (5) of the Constitution and on this ground the order of detention stands vitiated. Besides this, the privilege claimed by the detaining authority under Section 9 (2) of the Act by not disclosing the identity of the witnesses is not genuine in the absence of affidavit in reply filed by the detaining authority. Therefore, according to the learned advocate for the petitioner, continued detention of the petitioner has become illegal and the impugned order of detention stands vitiated and the petition deserves to be allowed and the petitioner requires to be set at liberty forthwith.

5. Mr. K.T. Dave, learned AGP has appeared on behalf of the respondents and opposed the petition by

making oral submissions. He contended that documents like statement of head constable and report of chemical analyser are not vital documents. He further contended that the report of chemical analyzer was not in existence at the time of passing of the impugned order of detention and both the above documents were not considered by the detaining authority for passing the impugned order of detention. He further contended that copy of the statement of head constable was supplied to the detenu subsequently but not pari passu. He further contended that the privilege under section 9 (2) of the Act was rightly claimed by the detaining authority. He further contended that the petitioner is rightly detained by the detaining authority after considering her antecedents and activities which are prejudicial to the maintenance of public order and health and, therefore, he urged that the petition may be rejected.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order of detention, it is seen that there are four cases registered against the petitioner for commission of offences under the Prohibition Act and statements of two anonymous witnesses in unregistered cases were recorded. The detaining authority has further observed that the ordinary provisions of law are found insufficient and there was no alternative but to pass the order of detention against the detenu.

8. The learned advocate for the petitioner contended that following documents are not supplied to the detenu:

1. Statement of Head Constable Rasoolbeg for offence registered as Prohibition CR No. 46/2000 with Pradhyumn Nagar Police station.

2. Statement of Head Constable Narendrakumar C. Raval for offence registered as Prohibition CR No. 191/2000 with Pradhyumn Nagar police Station.

3. Statement of unarmed Police Constable Mulubhai J Dhadhal for the offence registered as Prohibition CR No. 88/2001 with Pradhyumn Nagar police station.

4. FSL/CA report for the offence registered as

Prohibition CR No. 88/2001 with Pradhyumn Nagar Police station.

5. FSL/CA report for the offence registered as Prohibition CR No.108/2001 with Pradhyumn Nagar Police Station.

9. In view of the above contention, the question which requires to be considred is as to what would be the effect of non-supply of aforesaid documents to the detenu in light of the principles enunciated by the Supreme Court as well as this Court.

10. In the case of M. Ahmedkutty v. Union of India, (1990) 2 SCC 1, the Supreme Court has considered the effect of non-supply of the documents. In that case the documents like bail application, bail order, etc., were not supplied to the detenu and it has been held that right to make an effective representation guaranteed under Article 22 (5) of the Constitution is violated and, therefore, continued detention is held to be illegal.

11. In the case of Amrutbhai Ramabhai Vagri v. Commissioner of Police, Ahmedabad City, 1994 (2) GLH (UJ) 5, this Court held that non-supply of the report of Chemical Analyzer though demanded by the detenu is also a vital fact to be considered since it infringed the right of the detenu of making an effective representation under Article 22 (5) of the Constitution.

12. Applying the principles laid down by the Supreme Court and this Court in the above mentioned judgments to the facts of the present case, it is clear that the present case is squarely covered by the aforesaid two judgments. At the cost of repetition, be it stated that the documents like statement of the Head Constable who has raided the premises of the petitioner and on the basis of said raid FIR came to be registered was not supplied to the detenu pari passu, though as per the learned AGP, the same was supplied subsequently to the detenu. Moreover, copy of the report of Chemical Analyzer is also not supplied to the detenu. Therefore, non-supply of vital documents pari passu has caused serious prejudice to the petitioner of making an effective representation before the detaining authority.

13. The Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696 held that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is a

constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu in grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution.

14. On overall view of the matter, the continued detention of the petitioner - detenu has become illegal and therefore the petition deserves to be allowed.

15. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)